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Governor

State of Connecticut  
Department of Developmental Services



Peter H. O'Meara  
Commissioner

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Deputy Commissioner

## Notice of Final Agency Action

TO: All Interested Persons

FROM: Peter H. O'Meara, Commissioner

DATE: January 20, 2010

RE: Regulations Concerning Early Intervention Services for Infants and Toddlers and Their Families (aka "Birth to Three")

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The Commissioner of Developmental Services hereby provides Notice of Final Agency Action on regulations concerning **Early Intervention Services for Infants and Toddlers and Their Families** (aka "Birth to Three").

Notice of Intent to Amend Regulations was published in the Connecticut Law Journal on October 20, 2009. Two public hearings to receive testimony concerning the proposed amendments to the regulations were convened on November 12, 2009 at 2:00 p.m. and 5:00 p.m. in Room 2C of the Legislative Office Building in Hartford, CT. In addition, written comments were received and considered by the department through November 20, 2009. The Department of Developmental Services (DDS) has considered all public comments and plans no changes to the proposed, amended regulations for Birth to Three services. DDS's responses to the public comments are as follows:

### PUBLIC HEARING TESTIMONY AND COMMENT SUMMARY

- **Comment:** Why are there two different definitions of "parent" in the regulations?

**DDS Response:** The first definition of parent in section 17a-248-1 has been amended to reflect the IDEA definition that defines who has rights to procedural safeguards in IDEA. The second definition of parent in section 17a-248-11, which applies only to the cost participation section of these regulations, is from the Connecticut Birth to Three statute that defines who is legally responsible for paying fees.

- **Comment:** References to "parent" and "family" are not consistent throughout the Birth to Three regulations.

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**DDS Response:** The references to both “parent” and “family” are consistent with the manner in which they are used within the regulations and have not been changed in the amendments to these regulations.

- **Comment:** Why is the Birth to Three fee scale for “families” instead of “parents”? What defines a “family” in the sliding fee scale’s “family size”?

**DDS Response:** The fee scale, as requested by the State Interagency Coordinating Council (ICC) in 2003, was designed to reflect “family size”. “Family” is defined, in section 17a-248-11, as “a group of two or more persons related by birth, marriage, or adoption who live together” and was defined for that purpose. This is the current language used in the regulations.

- **Comment:** Why is the word “contribution” used for the amount of money paid by parents? The word “contribution” implies a voluntary action.

**DDS Response:** The American Heritage College Dictionary, 4<sup>th</sup> edition, defines “contribution” as 1. The act of contributing 2. Something contributed 3. **A payment exacted for a special purpose; an impost or a levy** 4. An article or other work submitted for publication.

It is in the sense of the third definition of “contribution” that is used in the existing regulations. In subsection (a) of section 17a-248-11, “Contribution” is defined as “an amount of money determined to be due and payable currently from a parent.” This is the current language used in the regulations.

- **Comment:** Why is there such a big increase in fees after \$75,000 in income?

**DDS Response:** In 2003, when the sliding fee scale was revised, the State Interagency Coordinating Council (ICC) recommended dropping the fees for incomes of less than \$85,000 and increasing them for incomes more than \$85,000. Public Act 09-3 of the September Special Session requires the Department of Developmental Services to increase all Birth to Three fees by sixty percent. Public Act 09-3 neither required nor anticipated any other changes to the fee schedule.

- **Comment:** The regulations say that “The aggregate contribution shall not exceed the state cost” What is meant by state cost?

**DDS Response:** The state cost is the actual amount paid by the state to the child’s program over the course of the child’s enrollment.

- **Comment:** Why are services “not cancelled more than 24-hours in advance” considered delivered in terms of family fees? Do Birth to Three programs get paid for services cancelled with less than 24-hours advance notice?

**DDS Response:** To discourage families from last-minute cancellations of services, which are costly to providers, DDS, in its amendment of the Birth to Three regulations in 2003, included “cancellations with less than 24-hours notice” as part of the services included in a family’s monthly Explanation of Benefits. As long as one direct service is delivered each month, the family is charged the monthly fee. “Less than 24-hours notice cancellations,” for this purpose, are counted as direct services. Providers, however, who are also paid on a monthly basis, are not reimbursed if the family has received no face-to-face services during a month. This is the current language used in the regulations.

- **Comment:** With the increase in Birth to Three fees, families will withdraw from Birth to Three programs and wait until their child is three and then go to the Lead Education Agency (LEA) for special education services that have no direct cost for the parent. Children, not enrolled in Birth to Three services, will show up later in public schools with more significant delays and special education services will cost the state and the LEA more.

**DDS Response:** It is the department's hope that the early intervention providers can convince families of the benefits of early intervention. It will be the family's decision to access early intervention services.

- **Comment:** A 60% increase in fees is large and will be very difficult for some families to pay. Why can't there be some alternative way to raise revenue for Birth to Three services?

**DDS Response:** The 60% fee increase was established in Public Act 09-3 by the Connecticut General Assembly. The Birth to Three System is projecting a \$13 million deficiency in fiscal year 2010. All sources of revenue, including insurance and Medicaid, are being reviewed to determine the potential for greater reimbursements to the Birth to Three System.

- **Comment:** What is the 60% fee increase based upon? Families will not be able to pay some of these fees, which will deny equal access to services.

**DDS Response:** The Connecticut General Assembly, by passing Public Act 09-3, determined that all families should pay 60% more in fees for Birth to Three services. An initial proposal before the General Assembly was to increase Birth to Three fees by 100% consistent with other annual fee increases. The 60% fee increase, and the removal of the first two free months of service, was the compromise worked out by the General Assembly.

- **Comment:** As higher-income families, who are more likely to have good health insurance plans, withdraw from Birth to Three because of fee increases, insurance revenue for Birth to Three services will decrease.

**DDS Response:** If a parent withdraws from or declines to receive Birth to Three services, parent fee revenue and insurance revenue will decrease. However, that decrease in revenue will be balanced by a decrease in expenditures.

- **Comment:** What happens if the aggregate contributions by parents and their insurance plan are more than the aggregate costs of their child's Individualized Family Support Plan (IFSP) early intervention services? Is there a provision that determines whether the parents or the insurance company gets reimbursed for any overbilling for Birth to Three services? How will parents know if they and their insurance company have been overbilled for services?

**DDS Response:** The Birth to Three programs and the Birth to Three fiscal office track and monitor the insurance payments and fees collected from the family. If there is an overpayment at the end of the child's enrollment in the Birth to Three System, then the family will be reimbursed the amount of the overpayment.

- **Comment:** The 60% increase in fees is being done all at once and is not being gradually implemented.

**DDS Response:** The General Assembly, in Public Act 09-3, made the fee increase effective upon passage on September 25, 2009. The department has delayed the implementation of the fee increase until January 1, 2010 so that the amendments to the regulations and the revisions to the Annual Application under Part C of the IDEA could be properly noticed, be heard at a public hearing, and be given a comment period.

- **Comment:** ARRA stimulus money has been given to Birth to Three to enhance opportunities for early intervention but the increase in fees will limit that access.

**DDS Response:** The Birth to Three System is projecting a \$13 million deficiency in fiscal year 2010 because of increased enrollment and an increased number of hours for autism services. All sources of revenue, including insurance and Medicaid, are being reviewed to determine the potential for greater reimbursements to the Birth to Three System.

- **Comment:** Short term revenue gain from increased fees will jeopardize the long-term viability of the Birth to Three program.

**DDS Response:** Failure to respond to the projected \$13 million deficit, by increasing revenues from various sources, would put the Birth to Three System in greater jeopardy.

- **Comment:** Federal Part C of the Individuals with Disabilities Education Act (IDEA) regulations are in revision and could include an elimination of the ability for states to charge parent fees if insurance is being billed, so as to prevent double or over-billing.

**DDS Response:** The Department of Developmental Services (DDS) would have to respond to any changes in the federal regulations governing Part C of the IDEA.

- **Comment:** Many children with autism spectrum disorders (ASD) are seen by Birth to Three as children with speech delays and then these children are diagnosed with ASD. If more parents decide that Birth to Three fee increases are not within their ability to pay and with the elimination of the two month initial grace period for Birth to Three fees, fewer children will be diagnosed with ASD at an early age.

**DDS Response:** Evaluation and screening for developmental delays including autism spectrum disorders is still free through the Birth to Three System.

- **DDS Comment:** In response to the issuance by the Legislative Commissioners' Office of a new State of Connecticut Manual for Drafting Regulations, Revised December 2009, the Department of Developmental Services has undertaken to make several technical changes to the existing Early Intervention Services for Infants and Toddlers and Their Families regulations. The Manual states that "regulations should be uniform in style and language conventions and should be drafted in a manner that is clear and concise." It further states that "this manual is intended as a tool to enable agencies to craft language in a uniform manner that is consistent with the style of language in the Connecticut General Statutes." These technical changes are being made to place these regulations in conformance with the new and revised guidelines established in the Manual for Drafting Regulations.